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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: CWA - 206183

PRELIMINARY RECITALS

Pursuant to a petition filed on August 24, 2022, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on December 29, 2022, by telephone.

The issue for determination is whether the agency correctly denied a budget amendment request for an increase in the provider's daily rate for SHC.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
By: Angela Sutherland
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:
Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a 38 year old resident of Dane County.
2. Petitioner is diagnosed with epilepsy, seizure disorder, DP, developmental delay, mood disorder, intermittent explosive disorder, and other. s
3. Petitioner is enrolled in the IRIS program.
4. He resides in an adult family home (AFH) operated by [REDACTED].
5. On December 27, 2021 a Long Term Care Functional Screen showed that petitioner met the target group definition for Physical Disability and Developmental Disability.
6. Petitioner requires hands on assistance for five of six activities of daily living (ADLs) and all six Instrumental Activities of Daily Living (IADLs).
7. Petitioner requires overnight assistance.
8. Petitioner has behaviors that require a Behavioral Support Plan (BSP) and has a mental health condition that requires care. He had BSPs completed in March 2021, February 2022, June 2022.
9. Petitioner has a current Individual Support and Services Plan (ISSP) for the period from April 1, 2022 to March 31, 2023, with an annual budget of \$112,315.44 and an approved Budget Amendment of \$88,364.76, for a total of \$200,680.20, divided between supported employment, clinical and therapeutic therapy, supportive home care and AFH costs.
10. On December 3 ,2021, petitioner submitted a budget amendment request for an increase in the daily rate paid to [REDACTED], in the amount of \$237.44 per day.
11. In January 2022, the budget amount was increased \$5,348.40 as a result of legislation.
12. On August 19, 2022, TMG issued to petitioner a Notice of Action denying his request for a Budget Amendment for supportive home care for an Adult Family Home because the request was not cost-effective.
13. On August 19, 2022, the agency issued a notice of non-response for the request for additional goods or services and included a Notice of Action – IRIS Program, stating that the request was not cost-effective to support petitioner’s outcome.
14. On August 26, 2022, the Division received petitioner’s request for hearing by U.S. Mail, postmarked August 24, 2022.

DISCUSSION

The IRIS program is a Medical Assistance (MA) home and community-based long term care waiver program authorized under §1915(c) of the Social Security Act. IRIS is an alternative to Family Care, Partnership, and PACE—all of which are managed care programs. The IRIS program, in contrast, is designed to allow participants to direct their own care and to hire and direct their own workers.

The federal government has promulgated 42 C.F.R. §441.450 - .484 to provide general guidance for this program. Those regulations require that the Department’s agent must assess the participant’s needs and preferences (including health status) as a condition of IRIS participation. Id., §441.466. The Department’s agent must also develop a service plan based on the assessed needs. Further, “all of the State’s applicable policies and procedures associated with service plan development must be carried out ...” Id. §441.468.

The IRIS waiver application most recently approved by the Centers for Medicare and Medicaid Services (CMS) is available on-line at <https://www.dhs.wisconsin.gov/iris/hcbw.pdf>. See Application for 1915(c) HCBS Waiver: WI.0484.R03.00 - Jan 01, 2021. State policies governing administration of the IRIS

program are included in the IRIS Policy Manual (available at <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf>), IRIS Work Instructions (available at <http://www.dhs.wisconsin.gov/publications/P0/P00708a.pdf>), and IRIS Service Definition Manual (available at <https://www.dhs.wisconsin.gov/publications/p00708b.pdf>).

Consistent with the terms of the approved waiver, every IRIS participant is assigned a budget which is generated based on information obtained during a screening of the participant's long-term care functional needs. Relevant program policy provides:

The individual budget calculation for IRIS is based upon characteristics, and long-term support needs as collected on the Long-term care Functional Screen (LTC FS). A profile of the individual is developed based upon this information and that profile will be used to determine the projected cost of services and supports for that individual if he or she were enrolled in Family Care. Only services that are included in the IRIS Waiver are included in this calculation. The prospective Personal information participant will know this budget amount when deciding whether to participate in IRIS or another Long-term care Program.

IRIS Policy Manual, Sec. 5.3.

With the assistance of an IRIS Consultant Agency (ICA), participants identify waiver allowable services that they need to meet their long term care outcomes. The cost of those services must typically fall within the budget estimate. *Id.* at 5.3A. Participants may however submit a budget amendment to the Department of Health Services with the assistance of their ICA. A budget amendment is "...a request made by the IRIS participant to increase the participant's budget to pay for an ongoing need not met within the current budget. Typical supports, services or goods requested through the BA process include additional Supportive Home Care, Respite, Daily Living Skills, Supported Employment, and other such services needed by an IRIS participant on an ongoing basis." *Id.* When the Department of Health Services denies a BA request, the participant may appeal the budget amount using the Medicaid fair hearing process. *Id.*

Petitioner resides in an adult family home operated by [REDACTED] and receives SHC services through that home. He requested a budget amendment pursuant a BA to request a rate increase from \$532.67 per day to \$781.89 per day. This request was subsequently amended to \$720 through negotiation.

The petitioner is the moving party and has the burden of proof. In a case involving a request for new services, the participant must prove that the requested services meets approval criteria. The evidentiary standard that must be met to meet this burden is a preponderance of the evidence. Thus, in this case, petitioner here has the burden to establish by a preponderance of the evidence in the record that he is entitled to the requested budget amendment.

Residential services including 1-2 bed adult family homes, 3-4 bed adult family homes, and residential apartment complexes are all allowable IRIS services. IRIS Service Definition Manual, pp. 6-8.

An adult family home (AFH) is a residence where one or two adults reside in which care, treatment, support, or service above the level of room and board is provided. The residence is the AFH operator(s)' primary residence.

An AFH also includes a "community care home." A community care home is a residence where one or two adults reside and in which care, treatment, support, or service above the level of room and board is provided. In the community care home the operator owns, rents, or leases the residence and employs staff who provides the care, treatment, support, CWA- 201234 4 or

service. The community care home is not the provider's primary residence. It includes homes that are the primary domicile of the operator or homes that are controlled and operated by a third party that hires staff to provide support and services.

Participants of the IRIS waiver choose an AFH and collaborate with the AFH operator to identify services including, but not limited to, supportive home care, personal care, and supervision (provided by the home and included in the AFH rate). Additional services include transportation, behavioral and social supports, daily living skills training, and recreational activities; IRIS participants can purchase these services from separate providers. In these instances, the AFH must provide access to and coordination with identified service providers. Furthermore, AFH services coordinate with services received by the participant, including health care and employment or vocational services. Each provider maintains an agreement with the IRIS participant that specifies the nature and scope of the AFH services provided. Additional requirements are described in the 1-2 bed AFH certification standards. Each 1-2 bed AFH operator must maintain current certification to provide services as a 1-2 bed AFH.

Id.

██████, owner of ██████, testified that support cost for round the clock care is increasing due to the pandemic and increased costs of living, home maintenance, staff education and support, overtime and retention of caregivers. She stated that petitioner can be aggressive, refuses to budge in public, has an extensive Behavioral Support Plan and erratic sleep, has an unsteady gait and is a flight risk. She also noted increased seizure activity and increased fall risk. She asserted that, for these reasons, petitioner often needs two people simultaneously to care for him. The budget amendment requests 20 hours of double staff time, compared to 12-15 previously needed.

The agency denied the Budget Amendment request based on the information in the Long-Term Care Functional Screen (LTCFS) and the Budget Amendment request form (F-01210). The provider (Doria, LLC.) is requesting a rate increase from \$532.67 per day to \$781.89 per day. The provider received the 5% daily rate increase through the American Rescue Plan Act (ARPA) in January 2022. The Department offered the provider \$650.00 per day and in response the provider lowered the daily rate request to \$720. The agency denied the request based on a conclusion that it was not cost-effective.

Petitioner asserts that his medical condition has changed, namely that he has had more seizures and an associated increased risk of falling. In IRIS, if the participant experiences a decrease in function due to a recent health issue or progression of a disability, then a change of condition Long-Term Care Functional Screen (LTCFS) is administered prior to commencement of an update request. The LTCFS is required to substantiate the need for additional supports and services. IRIS Policy Manual 5.6A. The LTCCFS on December 27, 2021 notes no new diagnoses and "no additional problems" except abrasion/bruise/stitches as result of fall two weeks earlier, however, the home manager Ismalia reported to the screener that seizure activity had increased from an average of 4-6 months apart and were more frequent in the last few months and that one seizure resulted in a fall that required a trip to urgent care.

The LTCFS documented in general terms an increase in seizures, however, it was not shown that this warrants the increase requested. The extent of increase was not specifically indicated. A short period of time with perceived increased seizures was noted, however it was not shown that it is an ongoing problem. There is no evidence that medical intervention was tried that failed to address this problem. Petitioner did not show that because of reported increased seizures and one instance of a seizure-related fall with injuries warrants double staff for outings or other measures that increase the cost of care significantly.

The LTCFS notes that petitioner elopes from the home and that there is a door alarm which was disconnected at the time of the screen. It is not clear why the alarm was disconnected or why reconnecting it would not prevent elopement. This is a known, long-term behavior and petitioner's BSP directs caregivers to "secure the home" so petitioner cannot elope. This is a cost-effective alternative to paying a caregiver to watch petitioner at all times.

The LTCFS noted that 3-4 times per week petitioner engages in offensive or violent behavior to others and that his behaviors require interventions 1-2 times per day. Petitioner has long-term mental health diagnoses and negative behaviors requiring intervention. It was not shown that these have increased significantly or that double staffing is the most cost effective way to manage the issues. A series of existing BSPs do not support this request.

There is no dispute that petitioner has multiple, severe and chronic health conditions requiring significant long term support. [REDACTED] assertion regarding the amount of double staff time petitioner needs requires more evidence than was offered at hearing to be effectively supported. It was not shown that more cost-effective measures to address elopement and behaviors were utilized. [REDACTED] testified that she will be required to discontinue adult family home service to petitioner if the budget amendment is not granted. While she may do so, there is no evidence regarding comparative costs from other adult family homes in the community. The inability of a single business to provide services within this petitioner's budget is not sufficient to establish cost-effectiveness in the entire community where petitioner lives. Without comparison data, I cannot find that petitioner's request is cost-effective. The agency must consider cost effectiveness when making budget decisions.

Petitioner failed to establish by a preponderance of the evidence that the budget amendment request is cost-effective.

CONCLUSIONS OF LAW

A preponderance of the evidence in the record does not establish that Petitioner requires additional funding for supportive home care in his current adult family home in order to effectively support his long term care needs; accordingly, the agency appropriately denied Petitioner's funding request.

THEREFORE, it is

ORDERED

That petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

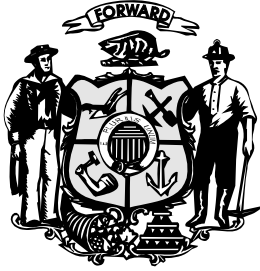
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 17th day of January, 2023



Beth Whitaker
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on January 17, 2023.

Bureau of Long-Term Support